

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DAVID W. HAMMOND,
Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social
Security,
Defendant.

)
) No. CV-10-00096-CI
)
)
) ORDER GRANTING DEFENDANT'S
) MOTION FOR SUMMARY JUDGMENT
) AND DENYING PLAINTIFF'S
) MOTION FOR SUMMARY JUDGMENT
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BEFORE THE COURT are cross-Motions for Summary Judgment (ECF No. 13, 16.) Attorney Rebecca M. Coufal represents Plaintiff; Special Assistant United States Attorney L. Jamala Edwards represents Defendant. The parties have consented to proceed before a magistrate judge. (ECF No. 6.) After reviewing the administrative record and briefs filed by the parties, the court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

JURISDICTION

Plaintiff David D. Hammond (Plaintiff) protectively filed for disability insurance benefits (DIB) and security income (SSI) on September 23, 2005. (Tr. 92.) In both cases, Plaintiff alleged an onset date of November 19, 2002. (Tr. 91.) Benefits were denied initially on February 6, 2006, and on reconsideration on May 10,

1 2006. (Tr. 45, 339.) Plaintiff requested a hearing before an
2 administrative law judge (ALJ), which was held before ALJ Paul
3 Gaughen on November 20, 2007. (Tr. 476-515.) Plaintiff was
4 represented by counsel and testified at the hearing. (Tr. 482-514.)
5 At a supplemental hearing on May 22, 2008, medical expert Ronald M.
6 Klein, M.D. and vocational expert K. Dennis Kramer testified. (Tr.
7 520-42; 552-60.) ALJ Paul Gaughen denied benefits. (Tr. 353-67.)
8 The Appeals Council granted review and remanded for additional
9 findings. (Tr. 375-77.)

10 A second hearing was held before ALJ Gaughen on August 27,
11 2009. (Tr. 563-618.) Appearing and testifying at the second
12 hearing were Plaintiff, medical expert Margaret R. Moore, Ph.D., and
13 vocational expert Fred Cutler. (Tr. 596-603; 574-96; 603-612.) The
14 ALJ again denied benefits and the Appeals Council denied review.
15 (Tr. 12-28; 4-7.) The instant matter is before this court pursuant
16 to 42 U.S.C. § 405(g).

17 STATEMENT OF FACTS

18 The facts of the case are set forth in the administrative
19 hearing transcripts and record and will, therefore, only be
20 summarized here.

21 At the time of the first hearing, Plaintiff was 31 years old.
22 (Tr. 482.) He has a 10th grade education, and obtained a GED. (Tr.
23 132.) He is a single father, with two young boys, ages 4 and 5, one
24 of whom has disabilities resulting from hydrocephalus. (Tr. 15; 491;
25 495.) Plaintiff's past work includes production supervisor for a CD
26 duplication company, customer service jobs with an insurance
27 company, technical support for an exercise equipment company,
28 janitorial work, carpenter's assistant, night stocker at a grocery

1 store, pizza delivery man, and for a brief time he built pallets at
2 a refrigeration company. (Tr. 504-506; 513.)

3 Plaintiff testified that he is the full-time caregiver for the
4 children in the home, and he cooks, does housekeeping, takes the bus
5 or walks to the grocery store, and feeds and cares for the
6 children. (Tr. 465; 495-99.)

7 Plaintiff states he cannot work because he has severe pain in
8 his back, legs and knees, and he suffers from depression, anxiety
9 and panic attacks. (Tr. 131; 405A.)

10 STANDARD OF REVIEW

11 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001),
12 the court set out the standard of review:

13 A district court's order upholding the Commissioner's
14 denial of benefits is reviewed de novo. *Harman v. Apfel*,
15 211 F.3d 1172, 1174 (9th Cir.2000). The decision of the
16 Commissioner may be reversed only if it is not supported
17 by substantial evidence or if it is based on legal error.
18 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir.1999).
19 Substantial evidence is defined as being more than a mere
20 scintilla, but less than a preponderance. *Id.* at 1098. Put
21 another way, substantial evidence is such relevant
evidence as a reasonable mind might accept as adequate to
support a conclusion. *Richardson v. Perales*, 402 U.S. 389,
401, 91 S.Ct. 1420, 28 L.Ed.2d 842 (1971). If the evidence
is susceptible to more than one rational interpretation,
the court may not substitute its judgment for that of the
Commissioner. *Tackett*, 180 F.3d at 1097; *Morgan v.*
Commissioner of Social Sec. Admin., 169 F.3d 595, 599 (9th
Cir.1999).

22 The ALJ is responsible for determining credibility,
23 resolving conflicts in medical testimony, and resolving
24 ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
25 Cir.1995). The ALJ's determinations of law are reviewed de
novo, although deference is owed to a reasonable
construction of the applicable statutes. *McNatt v. Apfel*,
201 F.3d 1084, 1087 (9th Cir.2000).

26 SEQUENTIAL EVALUATION PROCESS

27 Also in *Edlund*, 253 F.3d at 1156-1157, the court set out the
28 requirements necessary to establish disability:

1 Under the Social Security Act, individuals who are "under
2 a disability" are eligible to receive benefits. 42 U.S.C.
3 § 423(a)(1)(D). A "disability" is defined as "any
4 medically determinable physical or mental impairment"
5 which prevents one from engaging "in any substantial
6 gainful activity" and is expected to result in death or
7 last "for a continuous period of not less than 12 months."
8 42 U.S.C. § 423(d)(1)(A). Such an impairment must result
9 from "anatomical, physiological, or psychological
10 abnormalities which are demonstrable by medically
11 acceptable clinical and laboratory diagnostic techniques."
12 42 U.S.C. § 423(d)(3). The Act also provides that a
13 claimant will be eligible for benefits only if his
14 impairments "are of such severity that he is not only
15 unable to do his previous work but cannot, considering his
16 age, education and work experience, engage in any other
17 kind of substantial gainful work which exists in the
18 national economy...." 42 U.S.C. § 423(d)(2)(A). Thus, the
19 definition of disability consists of both medical and
20 vocational components.

21 In evaluating whether a claimant suffers from a
22 disability, an ALJ must apply a five-step sequential
23 inquiry addressing both components of the definition,
24 until a question is answered affirmatively or negatively
25 in such a way that an ultimate determination can be made.
26 20 C.F.R. §§ 404.1520(a)-(f), 416.920(a)-(f). "The
27 claimant bears the burden of proving that [s]he is
28 disabled." *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th
Cir.1999). This requires the presentation of "complete and
detailed objective medical reports of h[is] condition
from licensed medical professionals." *Id.* (citing 20
C.F.R. §§ 404.1512(a)-(b), 404.1513(d)).

It is the role of the trier of fact, not this court, to resolve
conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence
supports more than one rational interpretation, the court may not
substitute its judgment for that of the Commissioner. *Tackett*, 180
F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984).
Nevertheless, a decision supported by substantial evidence will
still be set aside if the proper legal standards were not applied in
weighing the evidence and making the decision. *Browner v. Secretary
of Health and Human Services*, 839 F.2d 432, 433 (9th Cir.1988). If
substantial evidence exists to support the administrative findings,
or if conflicting evidence exists that will support a finding of

1 either disability or non-disability, the finding of the Commissioner
2 is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir.
3 1987).

4 SEQUENTIAL PROCESS

5 The Social Security Act (the "Act") defines "disability" as the
6 "inability to engage in any substantial gainful activity by reason
7 of any medically determinable physical or mental impairment which
8 can be expected to result in death or which has lasted or can be
9 expected to last for a continuous period of not less than 12
10 months." 42 U.S.C. §§ 423 (d) (1) (A), 1382c (a) (3) (A). The Act also
11 provides that a Plaintiff shall be determined to be under a
12 disability only if his impairments are of such severity that
13 Plaintiff is not only unable to do his previous work but cannot,
14 considering Plaintiff's age, education and work experiences, engage
15 in any other substantial gainful work which exists in the national
16 economy. 42 U.S.C. §§ 423(d) (2) (A), 1382c(a) (3) (B). Thus, the
17 definition of disability consists of both medical and vocational
18 components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir.
19 2001).

20 The Commissioner has established a five-step sequential
21 evaluation process for determining whether a claimant is disabled.
22 20 C.F.R. §§ 404.1520, 416.920. Step one determines if he or she is
23 engaged in substantial gainful activities. If the claimant is
24 engaged in substantial gainful activities, benefits are denied. 20
25 C.F.R. §§ 404.1520(a) (4) (I), 416.920(a) (4) (I).

26 If the claimant is not engaged in substantial gainful
27 activities, the decision maker proceeds to step two and determines
28 whether the claimant has a medically severe impairment or

1 combination of impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii),
2 416.920(a)(4)(ii). If the claimant does not have a severe
3 impairment or combination of impairments, the disability claim is
4 denied.

5 If the impairment is severe, the evaluation proceeds to the
6 third step, which compares the claimant's impairment with a number
7 of listed impairments acknowledged by the Commissioner to be so
8 severe as to preclude substantial gainful activity. 20 C.F.R. §§
9 404.1520(a)(4)(ii), 416.920(a)(4)(ii); 20 C.F.R. § 404, Subpt. P,
10 App. 1. If the impairment meets or equals one of the listed
11 impairments, the claimant is conclusively presumed to be disabled.

12 If the impairment is not one conclusively presumed to be
13 disabling, the evaluation proceeds to the fourth step, which
14 determines whether the impairment prevents the claimant from
15 performing work he or she has performed in the past. If plaintiff
16 is able to perform his or her previous work, the claimant is not
17 disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At
18 this step, the claimant's residual functional capacity ("RFC")
19 assessment is considered.

20 If the claimant cannot perform this work, the fifth and final
21 step in the process determines whether the claimant is able to
22 perform other work in the national economy in view of his or her
23 residual functional capacity and age, education and past work
24 experience. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Bowen*
25 *v. Yuckert*, 482 U.S. 137 (1987).

26 The initial burden of proof rests upon the claimant to
27 establish a *prima facie* case of entitlement to disability benefits.
28 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971); *Meanel v.*

1 *Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is
2 met once the claimant establishes that a physical or mental
3 impairment prevents him from engaging in his or her previous
4 occupation. The burden then shifts, at step five, to the
5 Commissioner to show that (1) the claimant can perform other
6 substantial gainful activity, and (2) a "significant number of jobs
7 exist in the national economy" which the claimant can perform. *Kail*
8 *v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

9 **ALJ'S FINDINGS**

10 At step one of the sequential evaluation process, the ALJ found
11 Plaintiff has not engaged in substantial gainful activity since
12 November 19, 2002, the application date. (Tr. 14.) At step two, he
13 found Plaintiff has the following severe impairments: scoliosis of
14 C6 through T2, dysthymia, generalized anxiety disorder, pain
15 disorder, and personality disorder. (Tr. 14.) At step three, the
16 ALJ found Plaintiff does not have an impairment or combination of
17 impairments that meets or medically equals one of the listed
18 impairments in 20 C.F.R. Part 404, Subpt. P, App. 1. (Tr. 23.) The
19 ALJ then determined:

20 [C]laimant has the residual functional capacity to perform
21 light work as defined in 20 CFR 404.1567(b) and
22 416.967(b). He can sit 1 hour at a time and stand and
23 walk up to 5 hours in an 8-hour workday with short breaks
24 to relieve back spasms. He can lift and carry 25 pounds
25 occasionally and 15 pounds repeatedly. He can climb 2
26 flights of stairs 3-4 times and bend occasionally. He
27 responds slowly to significant changes in the work setting
28 and to normal work stressors, such as meeting production
quotas. Pain behaviors exhibited in the work environment
from time to time (weekly) may distract others. He cannot
do higher level social interaction activities, but he is
capable of handling perfunctory routine social
interactions.

(Tr. 24.)

1 At step four, the ALJ found Plaintiff is unable to perform any
2 past relevant work. (Tr. 27.) After taking into account
3 Plaintiff's age, education, work experience, residual functional
4 capacity and the testimony of a vocational expert, the ALJ concluded
5 jobs, such as appointment clerk, information clerk or scheduling
6 clerk, exist in significant numbers in the national economy that the
7 claimant can perform. (Tr. 27-28.) Thus, the ALJ concluded
8 Plaintiff has not been under a disability as defined in the Social
9 Security Act since November 19, 2002, the date the application was
10 filed. (Tr. 28.)

11 ISSUES

12 The question is whether the ALJ's decision is supported by
13 substantial evidence and is free of legal error. Specifically,
14 Plaintiff argues the ALJ improperly dismissed the opinions of "the
15 three psychologists, and consultative medical sources all [] who
16 diagnosed Hammond with a somatoform/pain disorder."¹ (ECF No. 14 at
17 14-16.)

18 Additionally, Plaintiff argues that the hypothetical failed to
19

20 ¹ Plaintiff argues that the ALJ erred by giving greater weight
21 to the medical examiners, "the first of whom arguably provided
22 legally erroneous testimony...." (ECF No. 14 at 16.) This is an
23 apparent reference to Dr. Klein's opinion offered in the first
24 proceeding that personality disorders are disabling only in "extreme
25 conditions" (Tr. 540), which provided the basis for the ALJ's first
26 decision finding no disability. Because Dr. Klein's testimony is
27 mentioned nowhere and therefore is not a basis for the ALJ's second
28 decision, this contention is not addressed.

1 include all of his nonexertional limitations. (ECF No. 14 at 17-18.)
2 Defendant argues the ALJ properly considered the opinion evidence,
3 determined Plaintiff's residual functional capacity, and determined
4 Plaintiff is not disabled. (ECF No. 17 at 5-12.)

5 DISCUSSION

6 A. Psychological Opinions.

7 1. Pain/Somatoform Disorder

8 Plaintiff raises the argument that the ALJ improperly dismissed
9 the opinions of three psychologists who diagnosed Plaintiff with a
10 somatoform/pain disorder. As the Commissioner correctly points out,
11 Plaintiff failed to adequately brief this issue with specificity.
12 The court is unable to consider matters that are not "specifically
13 and distinctly argued" in a party's brief. *Carmickle v.*
14 *Commissioner, Soc. Security Admin.*, 533 F.3d 1155, 1161 n.2 (9th
15 Cir. 2008); *Paladin Associates, Inc. v. Montana Power Co.*, 328 F.3d
16 1145, 1164 (9th Cir. 2003).

17 In addition, the court notes on *de novo* review of the record
18 that the ALJ fully considered the reports of the three psychologists
19 and adopted the diagnoses of "pain disorder." (Tr. 14.) For
20 example, Dr. Mabee completed a consultative psychological assessment
21 on December 7, 2005, and concluded that Plaintiff had better than
22 average intellectual abilities, with mild recall difficulties,
23 likely due to anxiety symptoms. (Tr. 134.) But, consistent with
24 the ALJ's findings, Dr. Mabee found that Plaintiff could perform
25 work tasks which require routine problem solving, he can concentrate
26 for brief periods, work at a consistent self-pace, and complete
27 simple, as well as complex task demands. (Tr. 135.) The ALJ
28 adopted Dr. Mabee's opinion that Plaintiff's limitations included

1 limited abilities to analyze complex directions and to frequently
2 interact with others. (Tr. 135.)

3 After a second examination in June, 2009, Dr. Mabee's diagnosis
4 included a pain disorder. Dr. Mabee also concluded that Plaintiff's
5 greatest limits would come from situations that involved complex
6 directions and instructions while maintaining a sustained effort and
7 pace and frequent interactions with others. (Tr. 409.) The ALJ
8 specifically used Dr. Mabee's observations in the hypothetical, when
9 he asked the VE to assume Plaintiff:

10 [W]ill respond slowly to significant changes in the work
11 setting and also responds slowly and sometimes
12 inappropriately to normal work stressors such as meeting
13 production quotas. He may distract other workers in
production or retail environments from time to time,
reason, exhibiting pain behavior. . . . Assume it's
going to happen weekly.

14 (Tr. 605-06.) Because the ALJ used Dr. Mabee's noted limitations in
15 the hypothetical, Plaintiff's contention fails.

16 Similarly, Pamela S. Ridgeway, Ph.D., examined Plaintiff in
17 June 2006 and found he had, in part, a pain disorder Associated with
18 Psychological Factors. (Tr. 468-69.) Dr. Ridgeway opined that
19 Plaintiff's cognitive abilities revealed no weaknesses that would
20 hinder his ability to perform adequately in a work environment. The
21 doctor also concluded that a review of medical records revealed his
22 symptoms appear to be "in excess of the medical findings, and his
23 presentation is strongly suggestive of a somatoform disorder." (Tr.
24 469.)

25 The ALJ's findings do not reject Dr. Ridgeway's findings.
26 Instead, the ALJ agreed with Dr. Ridgeway's general finding that
27 Plaintiff's impairments can likely be contributed to his
28 characterological issues: "[h]is primary problems appear to be

1 related to personality and social problems" (Tr. 26.) Dr.
2 Ridgway's findings were adopted by the ALJ in crafting the RFC.

3 Finally, Christine R. Guzzardo, Ph.D., evaluated Plaintiff and
4 her diagnosis concluded he had, in part, a Pain Disorder Associated
5 with Psychological Factors. (Tr. 331.) Dr. Guzzardo noted
6 Plaintiff's history of reporting physical symptoms that are
7 inconsistent with medical evaluation, that his physical complaints
8 appeared excessive and he failed to recognize the psychological
9 component to his pain, and he instead chose to medicate. The ALJ
10 acknowledged Dr. Guzzardo's opinion regarding Plaintiff's use of
11 prescription medications and the ALJ's conclusion is consistent with
12 the doctor's opinion. (Tr. 26.)

13 The RFC reflects the psychological component of Plaintiff's
14 impairment, but the ALJ concluded that Plaintiff complaints about
15 the severity of his pain were not entirely credible. The ALJ's
16 credibility determination is not challenged by Plaintiff, is
17 supported by the record, and the reasons for discounting Plaintiff's
18 credibility are "clear and convincing."² *Lingenfelter v. Astrue*,

19 _____
20 ² The ALJ found that Plaintiff's statements about the limiting
21 effects of his symptoms were not credible. (Tr. 25.) Where the ALJ
22 finds the claimant's testimony as to the severity of her pain and
23 impairments is unreliable, the ALJ must make a credibility
24 determination with findings sufficiently specific to permit the
25 court to conclude that the ALJ did not arbitrarily discredit
26 claimant's testimony. *Morgan v. Apfel*, 169 F.3d 595, 601-02 (9th
27 Cir. 1999). In the absence of affirmative evidence of malingering,
28 the ALJ's reasons must be "clear and convincing." *Lingenfelter*, 504

1 504 F.3d 1028, 1038-39 (9th Cir. 2007).

2 **2. The GAF.**

3 Plaintiff also asserts that because three psychologists
4 assigned him a GAF rating under 60, this moderate rating would
5 "usually, particularly considering the combination of the diagnoses,
6 render a claimant disabled." (ECF No. 14 at 16.) Plaintiff provides
7 no authority for this assertion. The Global Assessment of
8 Functioning (GAF) scale is a common tool for tracking and evaluating
9 the overall psychological functioning of a patient. A score of
10 51-60 indicates "moderate symptoms (e.g., flat affect and
11 circumstantial speech, occasional panic attacks) OR moderate
12 difficulty in social, occupational, or school functioning (e.g., no
13 friends, unable to keep a job)." *DSM-IV*, at 32.

14 The Commissioner has explicitly disavowed any use of the GAF

15 _____
16 F.3d at 1038-39; *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir.
17 2001). The ALJ "must specifically identify the testimony she or he
18 finds not to be credible and must explain what evidence undermines
19 the testimony." *Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir.
20 2001) (citation omitted). In this case, the ALJ listed a number of
21 appropriate considerations in making the credibility determination.
22 (Tr. 25-26.) For example, the ALJ cited the evidence that Plaintiff
23 was able to consistently care for multiple children, at least one of
24 whom was disabled, perform all household tasks and he made
25 inconsistent assertions to his medical providers. (Tr. 25-26.) The
26 ALJ's findings related to credibility constitute "clear and
27 convincing" reasons that are amply supported by substantial evidence
28 in the record.

1 scores as an indicator of disability. In August 2000, the
2 Commissioner, in discussing comments to the current mental disorder
3 evaluation regulations, stated that "[t]he GAF scale . . . does not
4 have a direct correlation to the severity requirements in our mental
5 disorder listings." See 65 Fed. Reg. 50746-01, 50765 (August 21,
6 2000). While a GAF score thus may be "of considerable help" to the
7 ALJ, for example, in assessing a claimant's residual functional
8 capacity, "it is not essential" to the accuracy of that assessment.
9 *Howard v. Commissioner of Social Security*, 276 F.3d 235, 241 (6th
10 Cir. 2002). The "failure to reference the GAF score" in assessing
11 a claimant's residual functional capacity in itself, therefore, does
12 not make the residual functional capacity assessment inaccurate.
13 *Id.*

14 Accordingly, to the extent there was any error here in the
15 ALJ's failure to mention the GAF score, such error was harmless. See
16 *Stout v. Commissioner, Social Security Admin.*, 454 F.3d 1050, 1055
17 (9th Cir. 2006) (error harmless where non-prejudicial to claimant or
18 irrelevant to ALJ's ultimate disability conclusion).

19 **B. The Hypothetical**

20 Plaintiff complains that the hypothetical posed to the
21 vocational expert was improper because it failed to include all the
22 nonexertional limitations outlined by Plaintiff's doctors, and
23 specifically, the limitations "even as noted by Dr. Moore." (ECF
24 No. 14 at 17.) Plaintiff fails to properly identify and argue the
25 issue.

26 A hypothetical posed to a vocational expert must set forth all
27 of the limitations and restrictions of a claimant. *Embrey v. Bowen*,
28 849 F.2d 418, 422 (9th Cir.1988). For the testimony of a vocational

1 expert to be reliable, the hypothetical posed must include all of
2 the claimant's functional limitations, both physical and mental.
3 *Thomas v. Barnhart*, 278 F.3d 947, 956 (9th Cir. 2002). A
4 hypothetical which does not contain all of the limitations the ALJ
5 found credible and supported by the record is defective. See
6 *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005).

7 Although the hypothetical may be based on evidence that is
8 disputed, the assumptions in the hypothetical must be supported by
9 the record. *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995)
10 (citing *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9th Cir. 1984)).

11 It appears from the passage cited by Plaintiff this issue is
12 based upon the VE's speculation that if the moderate limitations
13 were to increase or become exacerbated, Plaintiff might not be able
14 to work:

15 I mean, the two moderate limitations of significance, the
16 ability to maintain attention and concentration and the
17 ability to complete a normal workday, if those rise to
18 where it's interfering with his job performance two, three
19 times per month, that would be, you know, probably not
20 acceptable.

21 (Tr. 611.)

22 The problem with Plaintiff's reliance upon this statement is
23 two-fold: (1) the VE's conclusion is premised upon facts that are
24 not in the record - the difficulties were assessed as moderate, and
25 no evidence exists that the limitations will "rise"; and (2) the
26 VE's conclusion is purely speculative and not based upon any medical
27 evidence or opinion contained within the record. The isolated
28 opinion by the VE is not based upon substantial evidence and, thus,
the ALJ was free to reject the opinion. The ALJ need only include
impairments in a hypothetical posed to a VE that are supported by

1 substantial evidence in the record. *Osenbrock v. Apfel*, 240 F.3d
2 1157, 1164 (9th Cir. 2001). Plaintiff's argument is not supported
3 by the record and the ALJ did not err in constructing the
4 hypothetical to the vocational expert.

5 In this case, the ALJ's hypothetical included the physical
6 limitations as found by Dr. Jekyll. The hypothetical also included
7 specific nonexertional limitations related to Plaintiff's
8 psychological impairments, including his likely difficulties with
9 complex directions and social interactions with the general public.
10 The Plaintiff's vague argument that the ALJ erred by neglecting to
11 include all his limitations in the hypothetical fails.

12 **CONCLUSION**

13 Having reviewed the record and the ALJ's findings, this court
14 concludes the ALJ's decision is supported by substantial evidence
15 and is not based on error. Accordingly,

16 **IT IS ORDERED:**

17 1. Defendant's Motion for Summary Judgment (**ECF No. 16**) is
18 **GRANTED.**

19 2. Plaintiff's Motion for Summary Judgment (**ECF No. 13**) is
20 **DENIED.**

21 The District Court Executive is directed to file this Order and
22 provide a copy to counsel for Plaintiff and Defendant. Judgment
23 shall be entered for Defendant and the file shall be **CLOSED.**

24 DATED June 30, 2011.

25 S/ CYNTHIA IMBROGNO
26 UNITED STATES MAGISTRATE JUDGE
27
28